

## **SUBCHAPTER E : EMERGENCY ORDERS**

### **§116.410. Applicability.**

The owner or operator of a facility may apply to the executive director for an emergency order to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophic event necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. For purposes of this section, a catastrophic event is an unforeseen event including, but not limited to, an act of God, an act of war, severe weather conditions, explosions, fire, or other similar occurrences beyond the reasonable control of the operator, which renders a facility or its functionally related appurtenances inoperable.

Adopted August 16, 1993

Effective September 13, 1993

### **§116.411. Application for an Emergency Order.**

The owner or operator of a facility who applies for an emergency order shall submit a sworn application which contains all of the following:

- (1) a statement that the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions, and are necessary for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophic event;
- (2) a description of the catastrophic event;
- (3) a statement that there are no practicable alternatives to the proposed construction and emissions;
- (4) a statement that the emissions will not cause or contribute to a condition of air pollution;
- (5) a statement that the proposed construction and emissions will occur only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, providing no more than a de minimus increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property;
- (6) a description of the proposed construction and the type and quantity of air contaminants to be emitted;
- (7) an estimate of the dates on which the proposed construction and emissions will begin and end;

(8) an estimate of the date on which the facility will begin operation; and

(9) any other information or item the executive director may require to support or explain the need for, or to expedite the issuance of, an emergency order; including information regarding the applicability of and compliance with any federal requirements for new or modified sources.

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**§116.412. Public Notification.**

The Texas Natural Resource Conservation Commission (TNRCC) shall publish notice of the issuance of an emergency order in the Texas Register as soon as practicable after issuance of the order. If the order is issued prior to a hearing, the order shall fix a time and location for a hearing which is to be held as soon as practicable after the order is issued. The TNRCC shall publish notice of any hearing in the Texas Register not later than the tenth day prior to the date set for the hearing, plus give any other general notice determined by the executive director to be warranted and practicable under the circumstances. Notice of the issuance and notice of the hearing may be consolidated for publication in the Texas Register.

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September 13, 1993

**§116.413. Public Hearing for an Emergency Order.**

A public hearing on the merits and needs of an emergency order shall be held either prior to or following issuance of the order. If the hearing is held prior to issuance of a proposed emergency order, the Texas Natural Resource Conservation Commission (TNRCC or Commission) shall affirm the order as proposed, issue a modified order, or deny and set aside the order. If the hearing is held following issuance of an emergency order, the Commission shall affirm, modify, or set aside the order as issued. Any hearing on an emergency order shall be conducted by the commission or a hearings examiner of the commission in accordance with provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§103.41-103.65 of this title (relating to Procedural Rules).

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**§116.414. Affirmation of an Emergency Order.**

The commission shall affirm a proposed or issued order if the applicant shows at the hearing, by a preponderance of the evidence, that:

(1) the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

- (2) there are no practicable alternatives to the proposed construction and emissions;
- (3) the emissions will not cause or contribute to a condition of air pollution;
- (4) the proposed construction or emissions will occur only:

- (A) at property where the catastrophic event occurred; or

- (B) at other property owned by the owner or operator of the damaged facility which produces the same intermediates, products, or by-products, so long as there will be no more than a *de minimis* increase in the predicted concentration of the air contaminants at or beyond the property line at such other property;

- (5) the time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and

- (6) the schedule in the order for submission of a complete permit application is reasonable.

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**§116.415. Contents of an Emergency Order.**

An emergency order issued by the executive director shall contain at least the following:

- (1) a description of the emergency construction and emissions to be authorized;
- (2) reasonable time limits for the beginning and the completion of the proposed construction and emissions;
- (3) authorization for action only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which also produces the same intermediates, products, or byproducts, provided there will be no more than a *de minimis* increase in the concentration of air contaminants at or beyond the property line at such other property; and
- (4) a schedule for submission of a complete construction permit application under provisions of the Texas Clean Air Act, §382.0518.

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**§116.416. Requirement to Apply for a Permit or Modification.**

The owner or operator of a facility for which an emergency order has been issued shall submit an application within 60 days of issuance of the order pursuant to the Texas Clean Air Act (TCAA), §382.063, and in accordance with provisions of the TCAA, §382.0518, and with Subchapter B of this chapter (relating to New Source Review Permits). The application shall be reviewed and acted upon by the executive director without regard to construction activity authorized by the emergency order. The appropriate permit fee shall be due and payable pursuant to the undesignated head Permit Fees in Subchapter B of this chapter. Costs and expenses related to additions, replacement, or repair of facilities or control equipment shall not be a consideration in any determination in the review of this application.

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Effective September 13, 1993

**§116.417. Modification of an Emergency Order.**

The Texas Natural Resource Conservation Commission shall modify a proposed or issued order if the hearing record shows that:

(1) construction and emissions otherwise precluded under the Texas Clean Air Act are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(2) there is no practicable alternative to such construction and emissions; and

(3) modification of certain terms of the proposed or issued order is necessary to make the order, construction, and/or emissions meet the requirements stated in §116.414 of this title (relating to Affirmation of an Emergency Order).

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Effective September 13, 1993

**§116.418. Setting Aside an Emergency Order.**

The Texas Natural Resource Conservation Commission shall set aside a proposed or issued order if the hearing record does not show, in accordance with §116.414 of this title (relating to Affirmation of an Emergency Order) or §116.417 of this title (relating to Modification of an Emergency Order), that the order should be either affirmed or modified and adopted as modified.

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